IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8014 OF 2006

Palus Shikshan Prasarak Mandal & Anr. .. .. Petitioners
V/s
Smt. Seema Dhanaji Chavan & Ors.... ..... Respondents.

Office Notes, Office Memoranda of Coram, appearances Court's orders or directions and Registrar's orders.	))))	Court's or Judge's Orders

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Mr.N.V.Bandiwadekar, Adv. for the petitioners.

Mr.G.M.Savgave, Adv. For R.No.1.

Mr.M.H.Solkar, AGP for R. No.2.

CORAM: A.P. DESHPANDE, J.
1.3.2007

PC:

Rule.

Rule made returnable forthwith.

Taken up for final hearing with consent of the parties.

1. By the present petition the school management questions legality and propriety of the interlocutory order passed in MCA No.6/2006 whereby the Tribunal issued a direction against the petitioner restraining it from making any appointment in the post that had fallen vacant on account of termination of respondent No.1.

Respondent No.1 claims to have served the petitioner as assistant teacher from the academic sessions 1995-96 till the end of academic session 2004-05. The said academic session came to an end on or about 30.4.2005. After almost a period of one year the respondent filed an appeal when the process of selection had commenced with a view to fill in the vacancy. According to the petitioner the vacancy is already filled in by appointing one Shri Chandekar vide appointment order dated 4.10.2006. This fact was also brought to the notice of the Tribunal that the post is already filled in and the application moved by respondent No.1 is thus rendered infructuous on account of non existence of of vacancy itself. The application claiming interim relief preventing the petitioner from filling in vacancy was filed before the Tribunal on 16.10.2006 i.e. after the post was filled in by appointing Shri Chandekar which, truly speaking had rendered the application infructuous. The Tribunal has proceeded to grant relief by restraining the petitioner from filling in the post by observing that though the appointment is made the same has yet not been approved by Education department. The impugned order thus is patently illegal as the prayer

made by respondent No.1 seeking to restrain the petitioner from appointing any other teacher in place of the appellant had become infructuous. Non receipt of the approval to the appointment by the time the Tribunal passed the order is not the circumstance which has any bearing on the issue involved. One more aspect of the matter which requires consideration is the fact that the newly appointed candidate by name Shri Chandekar is not a party-respondent before the Tribunal in the appeal and thus no orders in regard to his termination could be passed. If the petitioner complies with spirit of the order under challenge it has to terminate the service of Shri Chandekar. Till date the appeal is not registered as the same is barred by limitation and application for condonation of delay is still pending. In these facts and circumstances I am of the clear view that the Tribunal should not have granted interim relief prayed for, moreso, when the vacancy was already filled in by appointing Shri Chandekar.

2. The learned counsel for the petitioner fairly states that the petitioner will not claim any equity on account of appointment of Shri Chandekar in the vacancy that had occurred due to

termination of respondent No.1 and that in case respondent No.1 ultimately succeeds, it will not be contended that no vacancy is available to accommodate the respondent No.1. Needless to clarify that all grounds barring aforesaid equitable ground wil be available to the petitioner for being urged before the Appellate Tribunal. In this view of the matter writ petition is allowed. Rule made absolute with no order as to costs.

1.3.2007